

REMARKS

The present Amendment responds to the Office Action dated October 22, 2007. The Examiner set a shortened statutory period for reply of three (3) months, making the present Amendment due by January 22, 2008.

Claims 9 and 11-15 are pending in the application.

Claims 1-12 were pending in the application.

Claims 1-8 and 10 have been cancelled.

Claims 13-15 have been added.

Claims 9 and 11-12 stand rejected under 35 U.S.C. § 112, paragraph 2, as being indefinite.

Claims 9 and 11-12 stand provisionally rejected on the grounds of non-statutory type double patenting over claims 1-9 of copending Application No. 10/536,515 in view of US 4,146,387 ("Thiele").

Rejections under 35 U.S.C. §§ 102, 103, 112, Claims 1-8, 10-12

In the office action dated October 22, 2007 the examiner has made the following 102, 103 and 112 rejections:

Rejection	Claims	Reference
102(b)	1-8 and 11-12	Thiele (US 4,146,387)
103(a)	1-8	Easton et al. (US 3,272,844)
103(a)	1-7 and 11-12	Walker (US 4,116,677) in view of Thiele
103(a)	1-7 and 11-12	Walker (US 4,168,319) in view of Thiele
112, ¶2	1-8, 10-12	N/A

Applicants have cancelled claims 1-8 and 10, and have amended claims 11 and 12 to depend from claim 9. Applicants submit that the current amendments render the above rejections moot.

Rejection under 35 U.S.C. § 112, Claim 9

The Examiner has rejected claim 9 under 35 U.S.C. § 112, paragraph 2, as being indefinite. The examiner states that a broad range together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite. Applicants have amended claim 9 to remove the language "Preferably R₁ is ethyl. Preferably R₅ is methoxymethyl or 3-cyanopropyl." Applicants submit that the rejection has been overcome and that claim 9 is now in condition for allowance.

Rejection Based on Non-Statutory Double Patenting, Claim 9

The Examiner has rejected claim 9 on the grounds of non-statutory obvious-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/536,515 in view of Thiele.

As noted by the Examiner, the R₂ substituents of the co-pending '515 application denotes methyl or ethyl.

In Thiele, R₅ in formula (I) (which corresponds to R₂ of said co-pending application) denotes hydrogen or alkyl (unsubstituted).

Applicants respectfully submit that neither of the aforementioned references teach R₅ as specific substituted alkyl radicals.

Therefore, the Application No. 10/536,515 in view of Thiele fails to teach or suggest to one of ordinary skill in the art the claimed compounds having substituted alkyls as R₅.

Based upon the foregoing, Applicants submit that the pending claims are in condition for allowance and the Examiner is courteously solicited to pass this application on to allowance. No other fees are believed to be payable at this time. However, the Commissioner is authorized to debit any applicable fees from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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Date: January 22, 2008